

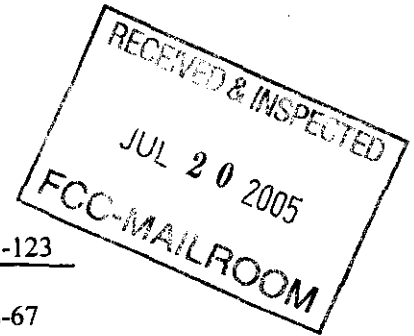
Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)

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Telecommunications Relay Services and)
Speech-to-Speech Services for)
Individuals with Hearing and Speech Disabilities)

CG Docket No. 03-123

CC Docket No. 98-67



REPORT AND ORDER

Adopted: July 14, 2005

Released: July 19, 2005

By the Commission: Chairman Martin; Commissioners Abernathy, Copps, and Adelstein issuing separate statements.

I. INTRODUCTION

1. In this *Report and Order (Order)* we address three issues related to the provision of Video Relay Service (VRS), a form of telecommunications relay service (TRS):¹ (1) the adoption of a speed of answer rule for VRS; (2) whether VRS should be required to be offered 24 hours a day, 7 days a week (24/7); and (3) whether VRS providers may be compensated for providing VRS Mail.² As set forth below, we conclude that because speed of answer is central to the provision of "functionally equivalent"³ TRS, and VRS is now a widely used – if not the preferred – form of TRS, VRS providers must provide service in compliance with the speed of answer rule adopted herein to be eligible for compensation from the Interstate TRS Fund.⁴ We find that: (1) by January 1, 2006, VRS providers must answer 80 percent

¹ TRS, created by Title IV of the Americans with Disabilities Act of 1990 (ADA), enables an individual with a hearing or speech disability to communicate by telephone or other device through the telephone system with a person without such a disability. See 47 U.S.C. § 225(a)(3) (defining TRS); 47 C.F.R. § 64.601(14). Title IV generally requires common carriers offering telephone voice transmission service to also offer TRS so that persons with hearing and speech disabilities will have access to the telephone system. See 47 U.S.C. § 225. VRS, a form of TRS, allows persons who use sign language to communicate with the communications assistant (CA) in sign language via a video link, rather than through typed text. See 47 C.F.R. § 64.601(17) (defining VRS).

² See Hands On Video Relay Services, Inc., Petition for Declaratory Ruling, CC Docket No. 98-67 (March 31, 2004) (*VRS Mail Petition*).

³ See 47 U.S.C. § 225(a)(3). The touchstone of TRS is that it provides telephone transmission service for persons with hearing and speech disabilities that is "functionally equivalent" to voice telephone service.

⁴ Until today, the Commission had waived for VRS the speed of answer rule applicable to the other forms of TRS under our TRS mandatory minimum standards. That waiver expires January 1, 2006 (or at such earlier time that the Commission mandates a speed of answer rule for VRS). See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket Nos. 90-571 & 98-67, CG Docket No. 03-123, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 19 (continued....)

of all VRS calls within 180 seconds, measured on a monthly basis;⁵ (2) by July 1, 2006, VRS providers must answer 80 percent of all VRS calls within 150 seconds, measured on a monthly basis; and (3) by January 1, 2007, VRS providers must answer 80 percent of all VRS calls within 120 seconds, measured on a monthly basis. We also conclude that effective January 1, 2006, VRS providers seeking compensation from the Interstate TRS Fund must provide VRS 24 hours a day, 7 days a week.⁶ Finally, we conclude that VRS providers may be compensated from the Interstate TRS Fund for the conversation minutes devoted to creating VRS Mail, *i.e.*, for recording a video message in American Sign Language (ASL) that is sent to a deaf or hard of hearing person's VRS equipment, or is otherwise retrievable by such person, so that a hearing person attempting to call a VRS user can leave a message when the VRS user is not available to answer the call.

II. BACKGROUND

2. Title IV of the Americans with Disabilities Act of 1990 (ADA)⁷ requires common carriers offering telephone voice transmission services to provide TRS throughout the area in which they offer service so that persons with disabilities will have access to telecommunications services, and provides that they will be compensated for their just and reasonable costs of doing so.⁸ Title IV is intended to further the universal service goal set out in the Communications Act of 1934 (Act), as amended, by providing to individuals with hearing or speech disabilities telephone services that are "functionally equivalent" to those available to individuals without such disabilities.⁹ Congress recognized that persons with hearing and speech disabilities have long experienced barriers to their ability to access, utilize, and benefit from telecommunications services.¹⁰

(Continued from previous page)

FCC Rcd 12475, at 12524, para. 123 (June 30, 2004) (*2004 TRS Report & Order*) (addressing speed of answer waiver for VRS); 47 C.F.R. § 64.604(b)(2) (speed of answer rule). The Commission raised in the Further Notice of Proposed Rulemaking (FNPRM) of the *2004 TRS Report & Order* whether, in view of the pending expiration date of the waiver, the Commission should adopt a speed of answer rule for VRS, and, if so, what the rule should be. See *2004 TRS Report & Order*, 19 FCC Rcd at 12568-12569, para. 246.

⁵ As noted above, the waiver of the speed of answer rule for VRS expires January 1, 2006.

⁶ The Commission raised in the FNPRM of the *2004 TRS Report & Order* whether VRS should be required to be offered 24/7. See *2004 TRS Report & Order*, 19 FCC Rcd at 12568, para. 245.

⁷ Pub. L. No. 101-336, § 401, 104 Stat. 327, 336-69 (1990), adding Section 225 to the Communications Act of 1934 (Communications Act), as amended, 47 U.S.C. § 225; implementing regulations at 47 C.F.R. § 64.601 *et seq.* In Title IV, Congress announced that "[i]n order to carry out the purposes established under section 1 [of the Communications Act of 1934], to make available to all individuals in the United States a rapid, efficient nationwide communication service, and to increase the utility of the telephone system of the Nation, the Commission shall ensure that interstate and intrastate telecommunications relay services are available, to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States." 47 U.S.C. § 225(b)(1).

⁸ See 47 U.S.C. § 225(c) & (d)(3).

⁹ See, e.g., See H.R. Rep. No. 485, Pt. 2, 101st Cong., 2d Sess. at 129-130 (1990) (House Report) (Section 225 "imposes on all common carriers providing interstate or intrastate telephone service[] an obligation to provide to hearing and speech-disabled individuals telecommunications services that enable them to communicate with hearing individuals. These services must be functionally equivalent to telephone service provided to hearing individuals."); 47 U.S.C. § 225(a)(3).

¹⁰ See, e.g., House Report at 129.

3. The advent of VRS as a form of TRS has been one of the most important developments in the short history of TRS. VRS allows a deaf person whose primary language is ASL to communicate in ASL with the CA, who is a qualified interpreter, through a video link; the CA, in turn, places an outbound telephone call to a hearing person. During the call, the CA communicates in ASL with the deaf person and by voice with the hearing person. As a result, the conversation between the two end users, deaf and hearing, flows in near real time and in a faster and more articulate manner than with a TTY or text-based TRS call. As a result, VRS calls reflect a degree of "functional equivalency" unimaginable in a solely text-based TRS world. The use of VRS reflects this reality: in April 2005 the monthly minutes of use were approximately 1.8 million, a ten-fold increase in the past two years, and more than the number of interstate traditional TRS minutes.¹¹

III. DISCUSSION

A. Speed of Answer

1. The TRS Speed of Answer Rule

4. TRS became available on a nationwide basis in July 1993.¹² Initially, the Commission's regulations required the provision of only "traditional," or text (TTY)-based TRS, and the Commission adopted mandatory minimum standards to govern the provision of this service.¹³ Providers seeking compensation from the Interstate TRS Fund for providing any form of TRS must offer service in compliance with the applicable mandatory minimum standards, unless waived.¹⁴ In the initial NPRM following the adoption of Section 225, the Commission explained that the statute "requires the Commission to establish minimum federal standards to be met by all providers of intrastate and interstate telecommunications relay services ... to ensure that telephone service for [persons with hearing and speech disabilities] is functionally equivalent to voice service offered to hearing individuals."¹⁵ Guided by this principle, the Commission's proposed rules included a speed of answer performance standard requiring that at least 85 percent of all calls be answered within 10 seconds (the "85/10" rule).

5. In July 1991, the Commission adopted the TRS mandatory minimum standards,

¹¹ See TRS Fund Performance Status Report as of May 31, 2005, www.neca.org (under Resources, then TRS Fund).

¹² See generally *2004 TRS Report & Order*, 19 FCC Rcd at 12477-12486, paras. 1-13 (overview of TRS and recent orders).

¹³ See generally *Telecommunication Services for Individuals with Hearing and Speech Disabilities, and the Americans With Disabilities Act of 1990*, CC Docket No. 90-571, Report and Order and Request for Comments, 6 FCC Rcd 4657 (July 26, 1991) (*TRS I*).

¹⁴ See, e.g., *2004 TRS Report & Order*, 19 FCC Rcd at 12547-12548, para. 189; 47 C.F.R. § 64.604(c)(5)(iii)(E) ("The TRS Fund administrator shall make payments only to eligible TRS providers operating pursuant to the mandatory minimum standards as required in § 64.604."); see generally *id.*, 19 FCC Rcd at 12481-12483, paras. 5-8 (overview of cost recovery framework).

¹⁵ See *Telecommunications Services for Hearing-Impaired and Speech-Impaired Individuals, and the Americans with Disabilities Act of 1990*, CC Docket No. 90-571, Notice of Proposed Rulemaking, 5 FCC Rcd. 7187, at 7188-7189, para. 12 (Nov. 16, 1990) (*1990 TRS NPRM*).

including the speed of answer rule.¹⁶ The rule stated, in relevant part, that “TRS shall, except during network failure, *answer 85% of all calls within 10 seconds* and no more than 30 seconds shall elapse between receipt of dialing information and the dialing of the requested number.”¹⁷ The Commission stated that although some common carriers favored relaxing the proposed rule, no evidence had been presented to suggest that the proposed rule was neither feasible nor clear. The Commission concluded that the 85/10 standard “will best meet our goal of providing relay services which are functionally equivalent to voice telephone services.”¹⁸

6. In 1998, the Commission proposed amendments to the TRS mandatory minimum standards to enhance the quality of TRS and broaden the potential universe of TRS users.¹⁹ These proposals included recognizing VRS as a form of TRS (“improved services”),²⁰ and also changing the TRS rules, including the speed of answer rule.²¹ The Commission proposed amending the speed of answer rule “to make the experience of persons using TRS in placing a telephone call through a TRS center more functionally equivalent to the experience of voice callers using the voice telephone network.”²² The Commission stated that “[t]he ability to make a telephone call *without delay* ... is fundamental to our concept of a rapid, efficient, Nationwide communications system.”²³ The Commission further emphasized that the “[s]peed-of-answer requirements are a cornerstone of the Commission’s TRS rules,” and the “ability of a TRS user to reach a CA prepared to place his or her call, without experiencing delays that a voice telephone user would not experience in placing a telephone call, is fundamental to the concept of ‘functional equivalence.’”²⁴

7. In the March 2000 *Improved TRS Order*, the Commission expanded the scope of TRS by

¹⁶ *TRS I*, 6 FCC Rcd at 4661, para. 21. The Commission required common carriers to offer TRS by July 26, 1993. *Id.*, 6 FCC Rcd at 4657, para. 1.

¹⁷ *Id.*, 6 FCC Rcd at 4669, Appendix B (47 C.F.R. § 64.604(b)(2)) (emphasis added). The rule did not address whether compliance would be measured daily, monthly, or on some other basis. *See id.*

¹⁸ *Id.*, 6 FCC Rcd at 4661, para. 21.

¹⁹ *Telecommunications Services for Hearing-Impaired and Speech Impaired Individuals, and the Americans with Disabilities Act of 1990*, CC Docket No. 90-571, Notice of Proposed Rulemaking, 13 FCC Rcd 14187 (May 20, 1998) (1998 *TRS NPRM*). This NPRM followed a Notice of Inquiry. *See Telecommunications Relay Services, the Americans with Disabilities Act of 1990, and the Telecommunications Act of 1996*, CC Docket No. 90-571, Notice of Inquiry, 12 FCC Rcd 1152 (Jan. 14, 1997).

²⁰ *See, e.g., 1998 TRS NPRM*, 13 FCC Rcd at 14198-14201, paras. 27-34.

²¹ Specifically, the 1998 *TRS NPRM* proposed: (1) revising the speed of answer rule to require TRS providers to answer 85% of all calls within 10 seconds by a CA “prepared to place the TRS call” at that time; (2) requiring that compliance with the 85/10 rule be calculated on a daily basis; (3) clarifying that the 10 second speed of answer time is triggered when a call initially arrives at the provider’s network, and that once a call does so, regardless of how the provider’s network handles the call, the call must be answered within 10 seconds by a CA prepared to place the call; and (4) finding that “abandoned” calls – *i.e.*, calls that are abandoned or successively redialed without being completed because the caller does not reach a CA prepared to place the call – not be included in the speed of answer calculation. *Id.*, 13 FCC Rcd at 14207-14208, paras. 50-53.

²² *Id.*, 13 FCC Rcd at 14189, para. 3.

²³ *Id.* (emphasis added).

²⁴ *Id.*, 13 FCC Rcd at 14207, para. 49.

recognizing VRS as a form of TRS eligible for compensation from the Interstate TRS Fund.²⁵ The Commission also modified the speed of answer rule “to minimize the circumstances under which customers experience delays in placing their calls through relay services.”²⁶ In so doing, the Commission again emphasized that “[f]or a TRS user, reaching a CA to place a relay call is the equivalent of picking up a phone and getting a dial tone. Any interpretation of our rule that delays a customer’s ability to place a call through the relay center clearly compromises the functional equivalence of relay service.”²⁷

8. The modified speed of answer rule: (1) requires 85 percent of all calls to be answered in 10 seconds by any method that results in the TRS caller’s call immediately being handled, not put in a queue or on hold;²⁸ (2) clarifies that the 10-second limit begins at the time the call is delivered to the TRS center’s network, and that the call is considered delivered “when the relay center’s equipment accepts the call from the LEC and the public switched network actually delivers the call to the TRS center”;²⁹ (3) requires that compliance with the speed of answer rule be measured on a daily basis;³⁰ and (4) requires that abandoned calls be included in the speed of answer calculation.³¹ The Commission stated that “[t]hese new rules ... will protect consumers from delays in placing calls through TRS services,” and “will ensure calls are received and answered by relay centers as quickly as possible, thereby giving TRS users functionally equivalent service.”³²

²⁵ See generally *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 5140, at 5152-5154, paras. 21-27 (March 6, 2000) (*Improved TRS Order*).

²⁶ *Id.*, 15 FCC Rcd at 5165-5166, para. 60.

²⁷ *Id.*

²⁸ *Id.*, 15 FCC Rcd at 5166, para. 61. This reflects a modification of the rule change proposed in the *Improved TRS Order NPRM* to permit the use of automated call handling. See *id.* The Commission explained that the new rule replaces the requirement that no more than 30 seconds elapse between the receipt of dialing information and dialing of the requested outbound call, and “replaces it with the requirement that the call must be immediately handled, whether by a CA or an automated process, but not placed in a call distribution queue.” *Id.* In other words, the TRS provider, whether by a CA or an automated system, must respond to the incoming call within 10 seconds and begin taking instructions from the calling party about the outbound call the calling party wishes to make.

²⁹ *Id.*, 15 FCC Rcd at 5166, para. 62.

³⁰ *Id.*, 15 FCC Rcd at 5166, para. 63. The Commission expressly rejected the argument that compliance should be measured over a longer time frame to account for the wide daily fluctuation in traffic loads. The Commission stated that “[t]he burden should be on relay services to manage staffing needs based on the fluctuations in traffic, not on consumers to tolerate delays in reaching a CA when traffic is high. Just like voice calls, TRS calls should be answered within a reasonable time period, regardless of traffic load.” *Id.*

³¹ *Id.*, 15 FCC Rcd at 5167, para. 64. The Commission stated that although it recognized that some calls would be abandoned for reasons that have nothing to do with the length of time it takes to reach a CA, it believed “that the 85% minimum allows for those instances.” *Id.* The Commission added that excluding abandoned calls could “distort the record of a TRS provider’s actual performance by reducing the total number of calls from which speed-of-answer is calculated.” *Id.*

³² *Id.*, 15 FCC Rcd at 5168, para. 66; see also *id.*, 15 FCC Rcd at 5209, Appendix B (47 C.F.R. § 64.604(b)(2)) (revised speed of answer rule). In the June 2003 *Second Improved TRS Report & Order* the Commission reorganized and consolidated certain rules, including the speed of answer rule, but did not substantively change the speed of answer rule. See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with* (continued....)

9. However, the March 2000 order did not address the speed of answer rule for VRS. In December 2001, the Commission waived the speed of answer rule for VRS providers for two years in order to “encourage more entrants into the VRS market and help provide more time for technology to develop.”³³ The Commission also stated that because demand for VRS was undetermined, the 85/10 rule might keep potential VRS providers out of the market, thereby hindering the development and growth of VRS.³⁴ In December 2003, the Commission extended the initial two-year waiver until June 30, 2004.³⁵ In the June 30, 2004, *2004 TRS Report & Order* the Commission further extended the speed of answer waiver for VRS until January 1, 2006, or such time as the Commission adopts a separate rule addressing speed of answer for VRS, whichever is earlier.³⁶ The Commission found that it was premature to require VRS providers to meet the speed of answer requirement (or to adopt a different speed of answer requirement for VRS), and noted comments that a lack of qualified interpreters would make it difficult to meet the standard.³⁷

10. At the same time, because of the importance of this issue to the notion of functional equivalency, the Commission sought comment in the *2004 TRS Report & Order*’s FNPRM on whether a particular speed of answer requirement should be adopted for VRS.³⁸ The Commission stated that “consumers have expressed some frustration over long wait times in placing VRS calls, a result at least in part due to the rapidly growing use of VRS by consumers,” and that “long wait times undermine the notion of functional equivalency, mandated by Congress.”³⁹ The Commission therefore sought comment on “what an appropriate speed of answer rule for VRS might be, whether it should be the same as the present rule for traditional TRS calls, when such a rule should become effective, whether there are a sufficient number of interpreters available to ensure that providers could meet a particular speed of

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Hearing and Speech Disabilities, Second Report and Order, Order on Reconsideration, and Notice of Proposed Rulemaking, CC Docket No. 98-67, CG Docket No. 03-123, 18 FCC Rcd 12379, at 12430-12431, paras. 100-101 (June 17, 2003) (*Second Improved TRS Report & Order*).

³³ See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order, CC Docket No. 98-67, DA 01-3029, 17 FCC Rcd 157, at 163, para. 16 (Dec. 31, 2001) (*VRS Waiver Order*). In 2001, two providers filed requests for waivers of various TRS mandatory minimum standards as applied to VRS, including the speed of answer rule. See *id.*, 17 FCC Rcd at 157, 158-159, paras. 1, 4-5.

³⁴ *Id.*, 17 FCC Rcd at 162-163, paras. 15-16. We note that in the April 2002 *IP Relay Declaratory Ruling*, recognizing IP Relay as a form of TRS, the Commission denied a provider’s request for waiver of the speed of answer rule for IP Relay. *Provision of Improved Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, Order, 17 FCC Rcd 7779, at 7788-7789, para. 29 (April 22, 2002) (*IP Relay Declaratory Ruling*). For this Internet-based service, the Commission stated that it would “consider the call delivered to the IP Relay center when the IP Relay center’s equipment accepts the call from the Internet.” *Id.* The Commission added that “[c]arriers providing IP Relay, in order to remain qualified to receive reimbursement from the Interstate TRS Fund, will have to maintain sufficient staffing to adhere to our speed of answer standard.” *Id.*

³⁵ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, Order, 18 FCC Rcd 26309, at 26310-26311, paras. 4-5 (Dec. 19, 2003).

³⁶ See *2004 TRS Report & Order*, 19 FCC Rcd at 12522-12524, paras. 119-123.

³⁷ *Id.*, 19 FCC Rcd at 12523-12524, paras. 120-122.

³⁸ *Id.*, 19 FCC Rcd at 12568-12569, para. 246.

³⁹ *Id.*

answer rule, and how a particular rule might affect the cost of providing VRS.”⁴⁰

11. On February 8, 2005 – after the close of the comment period on the speed of answer issue as raised in the *2004 TRS Report & Order*’s FNPRM – the Commission released a Public Notice seeking additional comment on the adoption of a speed of answer rule for VRS.⁴¹ The Commission noted that the comments previously filed lacked specificity on certain elements of a speed of answer rule, and therefore requested comment on several specific points, including what the rule should be, whether different standards should be phased in over time, how speed of answer should be measured, how abandoned calls should be treated, how “call backs” should be treated, whether compliance should be measured on a daily, monthly, or some other basis, and whether the providers should be required to submit reports to the Commission detailing their compliance with the speed of answer rule.⁴²

2. The Comments on the Application of a Speed of Answer Rule to VRS

12. In response to the *2004 TRS Report & Order*’s FNPRM, seven comments and five reply comments were filed;⁴³ in response to the *2005 Speed of Answer PN*, 27 comments and 48 reply comments were filed.⁴⁴ The majority of commenting VRS providers and the organizations representing deaf and hard of hearing consumers support adopting a speed of answer rule for VRS.⁴⁵ Supporting

⁴⁰ *Id.* Notwithstanding the fact that the issue of an appropriate speed of answer rule for VRS was expressly raised in the FNPRM, several parties sought reconsideration of the extension of the *2004 TRS Report & Order*’s speed of answer waiver for VRS until January 2006. The petitions for reconsideration are pending.

⁴¹ See *Federal Communications Commission Seeks Additional Comment on the Speed of Answer Requirement for Video Relay Service (VRS)*, CC Docket No. 98-67, CG Docket No. 03-123, Public Notice, 20 FCC Rcd 2376 (Feb. 8, 2005) (*2005 Speed of Answer PN*).

⁴² *Id.*

⁴³ Comments were filed by the State of California and the California Public Utilities Commission (CA PUC) (Oct. 18, 2004); Communication Services for the Deaf, Inc. (CSD) (Oct. 18, 2004); Hands On Video Relay Services, Inc. (Hands On) (Oct. 15, 2004); National Video Relay Service Coalition (NVRSC) (Oct. 18, 2004); Sorenson Media, Inc. (Sorenson) (Oct. 18, 2004); Sprint Corporation (Sprint) (Oct. 18, 2004); and one individual, Karl Kosiorek (Oct. 5, 2004). Reply comments were filed by CSD (Nov. 15, 2004); Hands On (Nov. 15, 2004); NVRSC (Nov. 15, 2004); and two individuals, Sarah Blattburg (Nov. 12, 2004) and Judith Jones (Nov. 15, 2004). Several other commenters, although not specifically addressing the speed of answer requirement, expressed concern about the shortage of interpreters necessary to staff VRS centers as well as to provide services for the deaf and hard of hearing community.

⁴⁴ Comments were filed by CSD (Feb. 25, 2005); Hands On (Feb. 25, 2005); NVRSC (Feb. 25, 2005); Sorenson (Feb. 25, 2005); AT&T Corp. (AT&T) (Feb. 25, 2005); MCI (Feb. 25, 2005); NorCal Center on Deafness (NorCal) (Feb. 8, 2005); Registry of Interpreters for the Deaf, Inc. (RID) (Feb. 25, 2005); University of Minnesota, Disability Services (UMDS) (Feb. 25, 2005); Utah State Office of Rehabilitation (USOR) (March 3, 2005); and 56 individuals. Reply comments were filed by CSD (March 4, 2005); MCI (March 5, 2005); Hands On (March 4, 2005); NVRSC (March 4, 2005); Arizona Commission for the Deaf and Hard of Hearing (ACDHH) (March 4, 2005); California Public Utilities Commission (CAPUC) (March 4, 2005); Hamilton Relay, Inc. (Hamilton) (March 4, 2005); Sprint Corporation (Sprint) (March 4, 2005); and Gallaudet University, Gallaudet Interpreting Service (Gallaudet) (March 3, 2005).

⁴⁵ Compare AT&T Comments to PN at 2; Hands On Comments to PN at 1; CSD Comments to PN at 1-2; Sprint Reply Comments to PN at 2 (supporting adoption of a speed of answer rule); NVRSC Comments to PN at 1 (NVRSC is a coalition of nine organizations that generally represent persons who are deaf or hard of hearing); NorCal Comments to PN at 1 with Sorenson Comments to PN at 1; MCI Comments to PN at 1, and Hamilton Reply (continued....)

commenters stress that the functional equivalency mandate requires VRS providers to be able to answer a VRS call within a reasonable amount of time.⁴⁶ However, the majority of the individual commenters to the PN express their opposition to adopting a speed of answer rule based on their general belief that such a rule would compel the VRS providers to hire less qualified interpreters in order to meet the speed of answer rule.⁴⁷ Several commenters also maintain that VRS has become a sufficiently mature service to satisfy the speed of answer rule and that the Commission should either allow the existing speed of answer waiver to expire or adopt a speed of answer rule at this time.⁴⁸

13. The commenters recommending a speed of answer requirement suggest proposals ranging from applying the current 85/10 rule to VRS, to requiring 85 percent of all calls to be answered within 30 seconds.⁴⁹ Sorenson, although opposing the adoption of a speed of answer requirement, asserts that if a speed of answer requirement is adopted, the rule should require 80 percent of calls to be answered within four minutes for the first year, and 80 percent of calls to be answered within three minutes for the second year.⁵⁰ The commenters also generally propose that the rule should become effective within three to six months of the date of the order adopting a standard.⁵¹ Some commenters also

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Comments to PN at 1; USOR Comments to PN at 1; UMDS Comments to PN at 2 and GIS Reply Comments to PN at 3 (opposing adoption of a speed of answer rule). For the initial commenters supporting the adoption of a speed of answer rule, see CSD Comments at 29-30; Hands On Comments at 14-20; NVRSC Comments at 12; Sprint Comments at 11; CSD Reply Comments at 2-4. Several commenting parties assert that presently there are not a sufficient number of qualified interpreters in the labor pool to meet a mandatory answering standard and to have community interpreters available for other purposes. Sorenson Comments at 11; MCI Comments to PN at 2; RID Comments to PN at 1; Sorenson Comments to PN at 3; UMDS Comments to PN at 2. Some commenters also assert that if a speed of answer rule were adopted it would result in a high quality service with a slower answer speed being replaced by a lower quality service with a faster answer speed. Sorenson Comments to PN at 2; GIS Reply Comments to PN at 2. Sorenson argues that the Commission should not focus on just one element of functional equivalency (speed of answer). Sorenson Comments to PN at 4. CA PUC, UMDS, and USOR also oppose adoption of a speed of answer rule at this time. CA PUC Comments to PN at 16; UMDS Comments to PN at 2; USOR Comments to PN at 1. MCI further contends that the adoption of a speed of answer rule would create an outcome that would unfairly disadvantage new entrants. MCI Comments to PN at 2-3.

⁴⁶ See, e.g., Sprint Comments at 11.

⁴⁷ Out of 56 filed individual comments and reply comments, 50 oppose the adoption of a speed of answer rule.

⁴⁸ CSD Comments at 29-30; Hands On Comments at 14-20; NVRSC Comments at 12; CSD Reply Comments at 2-4.

⁴⁹ See AT&T Comments to PN at 2-3 (85 percent of all calls must be answered within 30 seconds (85/30)); Hands On Comments to PN at 2 (proposing 85/30 rule); NVRSC Comments to PN at 4 (proposing 85/10 rule); NorCal Comments to PN at 1 (proposing 85/10 rule); Sprint Reply Comments to PN at 2 (proposing initial 75/60 rule followed by 85/30 rule). We note that some commenters that oppose adoption of a speed of answer rule nevertheless offer standards if such rule were to be adopted.

⁵⁰ Sorenson Comments to PN at 7.

⁵¹ AT&T Comments to PN at 3 n.8 (6 months); CSD Comments to PN at 2 (3 months); Hands On Comments to PN at 4 (6 months); NVRSC Comments to PN at 4 (60 to 120 days); NorCal Comments to PN at 2 ("immediately"); Sprint Reply Comments to PN at 2 (6 months); Sorenson Comments to PN at 7 (6 months). Sorenson asserts that transition period is essential given the existing shortage of qualified interpreters. Sorenson Comments to PN at 7.

support having various speed of answer requirements phased in over time.⁵² Further, commenters generally agree that the speed of answer calculation should be measured, at least initially, on a monthly basis, and then in a few years on a daily basis.⁵³ CSD asserts, for example, that “[a] monthly measurement will provide the flexibility to meet the ebbs and flows characteristic of VRS in this changing market.”⁵⁴

14. Commenters also address the appropriate starting and ending points for measuring speed of answer.⁵⁵ Commenters generally agree that the measurement standard should be the same as the speed of answer measurement for IP Relay, where the measurement begins when the call is delivered to the provider’s server and ends when the call is assigned to a VRS CA to handle the call.⁵⁶ No commenters proposed an alternative method for this measurement.

15. Commenters also generally agree that abandoned calls⁵⁷ should be included in the VRS speed of answer calculation, as they are in the speed of answer calculation for the other forms of TRS.⁵⁸ CSD asserts, however, that calls that are abandoned within the permissible speed of answer time should not be included with the calculation.⁵⁹ In addition, commenters generally agree that “call backs” – i.e., calls where the consumer elects to have the provider call the consumer back when a VRS CA becomes available to place the call, rather than have the consumer wait for the next available CA⁶⁰ – should not be

⁵² CSD Comments to PN at 2 (phase-in of 75/60 within 3 months of date of order, and 85/30 within 6 months of date of order, with the goal of reaching 85/10 in 2 years); Sprint Reply Comments to PN at 2 (phase-in of 75/60 to 85/30).

⁵³ AT&T Comments to PN at 2-3; CSD Comments to PN at 5; Hands On Comments to PN at 6; Sorenson Comments to PN at 8. NVRSC and ACDHH recommend that the calculation be made on a daily basis. NVRSC Comments to PN at 8; ACDHH Reply Comments to PN at 3. MCI recommends that the calculation be made on a quarterly basis. MCI Comments to PN at 4.

⁵⁴ CSD Comments to PN at 5.

⁵⁵ AT&T Comments to PN at 3-4; CSD Comments to PN at 3; Hands On Comments to PN at 4-5; MCI Comments to PN at 4; NVRSC Comments to PN at 5; Sorenson Comments to PN at 7.

⁵⁶ AT&T Comments to PN at 3-4; CSD Comments to PN at 3; Hands On Comments to PN at 4-5; MCI Comments to PN at 4; NVRSC Comments to PN at 5; Sorenson Comments to PN at 7. AT&T and Hands On, however, caution that there may be a several seconds delay for the call to “synchronize” into the VRS system before an interpreter may answer the call. AT&T Comments to PN at 4 n.10; Hands On Comments to PN at 5.

⁵⁷ Abandoned calls are those calls answered by a relay center but never handled by a CA because the customer hangs up. The speed of answer rule requires that such calls be included in the speed of answer calculation. See 47 C.F.R. § 64.604(b)(2)(ii)(B); see also *Improved TRS Order*, 15 FCC Rcd at 5165, para. 59 n.117, 5167, para. 64 (addressing abandoned calls).

⁵⁸ AT&T Comments to PN at 4; CSD Comments to PN at 3; Hands On Comments to PN at 5; NVRSC Comments to PN at 6; ACDHH Reply Comments to PN at 3. RID, however, does not support the inclusion of abandoned calls in the calculation because VRS calls are susceptible of being dropped in the Internet Protocol. RID Comments to PN at 2.

⁵⁹ CSD states that when a call is abandoned shortly after the call is placed, it is generally because the consumer has decided either not to place the call, or to do so at another time, and not because the caller no longer wishes to wait for an interpreter or because he or she has waited too long. CSD Comments to PN at 3-4.

⁶⁰ See *Federal Communications Commission Clarifies that Certain Telecommunications Relay Services (TRS) Marketing and Call Handling Practices are Improper and Reminds that Video Relay Service (VRS) May not be* (continued....)

allowed because it is not an element of functional equivalency.⁶¹ Finally, all commenters support having providers submit their speed of answer data to the TRS Fund administrator either on a monthly or quarterly basis.⁶²

3. VRS Speed of Answer

16. We conclude that waiver of the speed of answer rule for VRS can no longer be justified. The record reflects that VRS providers have now had over three and a half years of experience in providing VRS, and with monthly minutes of use approaching two million (and now more than interstate traditional TRS), it can no longer be said that the provision of VRS is in its infancy. We do not, however, require VRS providers to meet the 85/10 speed of answer rule in the TRS mandatory minimum standards at this time. Instead, we adopt the following speed of answer rule for VRS, and amend our rules accordingly: (1) by January 1, 2006, VRS providers must answer 80 percent of all VRS calls within 180 seconds, measured on a monthly basis; (2) by July 1, 2006, VRS providers must answer 80 percent of all VRS calls within 150 seconds, measured on a monthly basis; and (3) by January 1, 2007, VRS providers must answer 80 percent of all VRS calls within 120 seconds, measured on a monthly basis. VRS providers must meet these standards to be eligible for compensation from the Interstate TRS Fund.

17. *VRS Speed of Answer Standards and Phase-In Period.* From the inception of TRS mandated by Title IV of the ADA, speed of answer has been one of the fundamental components of ensuring that TRS users have functionally equivalent access to the telephone system.⁶³ Substantial delays in reaching a CA who is ready to place the call cannot be reconciled with the ability of hearing persons to pick up the telephone and hear a dial tone.⁶⁴ We therefore conclude that VRS must be subject to a speed of answer requirement so that consumers using this service will have prompt access to a CA ready to place their call. The Commission has repeatedly recognized that TRS service should mirror voice telephone service to the extent feasible, and that requires that a VRS user be able to promptly reach a CA.

18. At the same time, we recognize the concerns expressed by commenters that there may

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Used as a Video Remote Interpreting Service, CC Docket No. 98-67, CG Docket No. 03-123, Public Notice, DA 05-141 at 4 & n.16 (Jan. 26, 2005) (*Call Handling Practices Public Notice*) (addressing certain kinds of "call back" arrangements).

⁶¹ AT&T Comments to PN at 4; CSD Comments to PN at 4-5; Hands On Comments to PN at 5-6; NVRSC Comments to PN at 7; NorCal Comments to PN at 1; CA PUC Reply Comments to PN at 5. Hands On and NVRSC recommend that providers be permitted to call back the calling party when necessary to "re-connect" a call that has been disconnected for technical reasons. Hands On Comments to PN at 6; NVRSC Comments to PN at 7 n.15. Sorenson and RID, however, support the call back feature as an option to be offered to the caller. RID Comments to PN at 3; Sorenson Comments to PN at 8. Sorenson recommends that the call backs be included in the speed of answer calculation. Sorenson Comments to PN at 8.

⁶² AT&T Comments to PN at 4 (monthly basis); CSD Comments to PN at 5 (monthly basis); Hands On Comments to PN at 6 (monthly basis); NVRSC Comments to PN at 8 (monthly basis); ACDHH Reply Comments to PN at 3 (monthly basis); CA PUC Reply Comments to PN at 7 (monthly basis); Sorenson Comments to PN at 8 (quarterly basis).

⁶³ See para. 4, *supra* (discussing 1990 TRS NPRM).

⁶⁴ *Id.*; see also para. 7, *supra*.

not presently be a sufficient number of qualified interpreters to permit VRS providers to meet a speed of answer rule that approaches the present rule applicable to the other forms of TRS.⁶⁵ We also recognize that as VRS providers hire interpreters in greater numbers to meet the demand of VRS users, there are fewer community interpreters available to meet the needs of persons with hearing disabilities in other circumstances (e.g., in schools, hospitals, business meetings, etc.).⁶⁶ Further, we recognize that providers will need some time to adjust their staffing levels to meet a speed of answer requirement. Therefore, as set forth below, we will phase-in speed of answer requirements beginning January 1, 2006.⁶⁷ We find that this should allow VRS providers adequate time to meet the requirements adopted herein.⁶⁸

19. We conclude, based on the record before us, that providers shall be required to meet the following VRS speed of answer requirements: (1) by January 1, 2006, VRS providers must answer 80 percent of all VRS calls within 180 seconds, measured on a monthly basis; (2) by July 1, 2006, VRS providers must answer 80 percent of all VRS calls within 150 seconds, measured on a monthly basis; and (3) by January 1, 2007, VRS providers must answer 80 percent of all VRS calls with 120 seconds, measured on a monthly basis. We believe these requirements best balance the fundamental policy considerations underlying the TRS regime (e.g. that reaching a CA ready to place the call is the same as reaching a dial tone) and the concerns of some providers and consumers that there is a shortage of interpreters.⁶⁹ We do not want to adopt standards that cannot be satisfied due to factors outside the control of the providers.⁷⁰ For this reason as well, we require VRS speed of answer to be measured on a

⁶⁵ RID, for example, asserts that although it supports VRS calls being answered in a reasonable period of time, it is "concerned that the current number of certified, qualified interpreters is well below the number required to adequately and safely provide quality VRS service." RID Comments to PN at 1. RID states that the "crisis in the quantity, quality, and qualifications of interpreters dates back to the [1996] ... declaration ... that a national shortage of interpreters exists," and that this "crisis affects all deaf citizens needing interpreting services for medical appointments, business meetings, court appearances, and now VRS." RID Comments to PN at 1. See also Sorenson Comments at 8-11; CA PUC Comments at 16; Sorenson Comments to PN at 4-5; MCI Comments to PN at 2-3; Hamilton Reply Comments at 1-2; CA PUC Reply Comments to PN at 7; ACDHH Reply Comments to PN at 1-2; UMDS Comments to PN at 2; USOR Comments to PN at 1. Many individual commenters expressed a similar concern.

⁶⁶ See, e.g., Sorenson Comments at 8-9; CA PUC Comments at 16; RID Comments to PN at 1; ACDHH Reply Comments to PN at 1-2; Hamilton Reply Comments to PN at 2; MCI Reply Comments to PN at 4; UMDS Comments to PN at 2.

⁶⁷ We note that when the Commission adopted the closed captioning rules it adopted a transition period because of concerns that a limited number of captioners were available. See *Closed Captioning and Video Description of Video Programming*, MM Docket No. 95-176, Report and Order, 13 FCC Rcd 3272, at 3292-3293, paras. 41-42 (Aug. 22, 1997).

⁶⁸ We also note that the question whether end-user VRS equipment must be interoperable with the relay services of all VRS providers is presently pending before the Commission. See *Petition for Declaratory Ruling Filed by the California Coalition of Agencies Serving the Deaf and Hard of Hearing (CCASDHH) Concerning Video Relay Service (VRS) Interoperability*, CC Docket No. 98-67, CG Docket No. 03-123, Public Notice, 20 FCC Rcd 4162 (March 1, 2005). We recognize that our resolution of the interoperability issue may also affect VRS providers' speed of answer performance.

⁶⁹ Because of the concerns we have noted about the shortage of interpreters, and comments in the record proposing a compliance standard of less than 85 percent, we find that the 80 percent threshold is appropriate in these circumstances.

⁷⁰ In this regard, we also recognize that call volume and the capacity of a provider to handle incoming Internet-based VRS calls may affect speed of answer performance. These issues are currently under review.

monthly basis, instead of a daily basis. We recognize that there may be some days when it is difficult to meet the speed of answer rule, particularly until the providers have determined, and are able to maintain, optimal VRS CA staffing levels to meet call demand. Because we are requiring VRS providers to offer service 24/7, a provider's answer performance during periods of less demand (*e.g.*, in the late night hours) may offset answer performance during periods of high demand.⁷¹

20. We believe that this is a starting point that moves us toward the goal of functional equivalency without compromising: (1) the quality of interpreters; (2) the availability of community interpreting; and (3) the viability of open competition where inflexible requirements serve as an obstacle to new entrants. We, therefore, will carefully monitor compliance with these requirements, and will revisit them if necessary. We will also re-examine the VRS speed of answer rule after January 1, 2007, to determine if, and when, it might be appropriate to further tighten the speed of answer requirement.

21. *Measuring Speed of Answer.* We conclude that the speed of answer measurement begins when the VRS provider's equipment accepts the call from the Internet. In the *IP Relay Declaratory Ruling*, the Commission stated that it would "consider the [IP Relay] call delivered to the IP Relay center when the IP Relay center's equipment accepts the call from the Internet."⁷² We adopt a similar rule for VRS. Further, the call is "answered" when either a CA or an automated system responds to the incoming call and begins taking instructions from the calling party about the outbound call the calling party wishes to make. We note that the commenters that addressed this issue generally support this approach.⁷³

22. *Abandoned Calls.* We conclude that abandoned calls must be included in the VRS speed of answer calculation. As many commenters note,⁷⁴ the treatment of abandoned calls for VRS should be the same as for the other forms of TRS.⁷⁵ The speed of answer rule presently provides that abandoned

⁷¹ RID asserts that the Commission should require VRS CAs to hold valid RID certification. RID Comments to PN at 3. Our rules require VRS providers to ensure that its VRS CAs are "qualified" interpreters, *i.e.*, an interpreter able "to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary." 47 C.F.R. § 64.604(a)(1)(iv). That regulation reflects the Department of Justice's definition of a qualified interpreter. See *Improved TRS Order*, 15 FCC Rcd at 5161-5162, paras. 47-48; see also *Second Improved TRS Report & Order*, 18 FCC Rcd at 12426-12427, paras. 90-92 (addressing definition of qualified interpreter). In adopting this requirement, the Commission stated that it believed "this requirement will protect users of [VRS] from encountering interpreters who do not have the skills necessary to effectively interpret a [VRS] call." *Improved TRS Order*, 15 FCC Rcd at 5161-5162, para. 48. We believe that that requirement is adequate to ensure that consumers have access to effective VRS service, and therefore reject RID's suggestion.

⁷² *IP Declaratory Ruling*, 17 FCC Rcd at 7788-7789, para. 29.

⁷³ AT&T Comments to PN at 3-4; CSD Comments to PN at 3; Hands On Comments to PN at 4-5; MCI Comments to PN at 4; NVRSC Comments to PN at 5; Sorenson Comments to PN at 7.

⁷⁴ AT&T Comments to PN at 4; CSD Comments to PN at 3; Hamilton Comments to PN at 5; NVRSC Comments to PN at 6; ACDHH Reply Comments to PN at 3.

⁷⁵ Sorenson asserts that sequential calls should be included in the speed of answer calculation, *i.e.*, that multiple calls made by the calling party through the same CA should be counted as separate calls (which results in the subsequent calls having a speed of answer of zero). Sorenson Comments to PN at 7; but see CSD Reply Comments to PN at 10; NVRSC Reply Comments to PN at 10 (both opposing this suggestion); see generally 47 C.F.R. §64.604(a)(3)(i) (requiring providers to handle sequential calls). Because the speed of answer measurement is intended to regulate the time it takes for the TRS user to reach a CA ready to place his or her call (*i.e.*, answer speed for the first in-bound call to the TRS provider), it does not apply to sequential calls made by a caller through (continued....)

calls shall be included in the speed of answer calculation.⁷⁶ As the Commission has explained, abandoned calls are those calls answered by a relay center, but never handled by a CA because the customer hangs up.⁷⁷ As noted above, although the Commission realized that some calls might be abandoned for reasons that have nothing to do with the length of time it takes for the call to reach a CA, such calls are included in the speed of answer measurement because excluding them would distort a provider's actual speed of answer performance by reducing the total number of calls from which speed of answer is calculated.⁷⁸

23. "Call Backs." We conclude that, effective January 1, 2006, VRS (and TRS) providers may not use a call back arrangement, including one that gives the consumer the choice of waiting for a CA or having the provider call the consumer back when a CA is available.⁷⁹ In the *Call Handling Practices Public Notice* the Commission stated that TRS providers may not offer their service in such a way so as to force a TRS consumer (deaf or hearing) to leave a message with the TRS provider asking the caller to provide call back information so that the provider can call the consumer back when a CA is available to handle the call.⁸⁰ The Commission further stated that this type of "call back" arrangement was impermissible because it relieves the provider of its central obligation to be available when a caller desires to make a TRS call, and permits the provider, and not the caller, to be in control of when the TRS call is placed.⁸¹ The Commission distinguished that situation, however, from that where the consumer reaches a recording but is given the choice of either waiting for an available CA or having a CA call the consumer back when available.⁸² The Commission stated, however, that it was "concerned that the use of a 'call back' option in any context is inconsistent with the functional equivalency mandate," but also noted that use of a call back feature "will be an issue only for those forms of TRS not subject to [a speed of answer] rule."⁸³

24. We conclude that because in this *Order* we have adopted a speed of answer requirement for VRS, VRS (and TRS) providers may not use a call back arrangement. We also conclude that call backs are inconsistent with functional equivalency and the notion that TRS is a service whereby a consumer, in reaching a CA, reaches the equivalent of a "dial tone," and therefore the ability to immediately have his or her outgoing call placed.⁸⁴

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the same CA. See CSD Reply Comments to PN at 10; NVRSC Reply Comments to PN at 10. Therefore, we reject Sorenson's suggestion.

⁷⁶ See 47 C.F.R. § 64.604(b)(2)(ii)(B).

⁷⁷ *Improved TRS Order*, 15 FCC Rcd at 5165, para. 59 n.117, & 5167, para. 64.

⁷⁸ *Id.*, 15 FCC Rcd at 5167, para. 64.

⁷⁹ We recognize a narrow exception to this rule in circumstances where because of reliance on the Internet the VRS equipment user and the CA become disconnected. In those circumstances, the VRS provider may initiate a call to the VRS user to try to reconnect and continue the call with the called party so that the VRS user does not have to contact the VRS provider again and wait for an available CA to handle the call.

⁸⁰ *Call Handling Practices Public Notice* at 4.

⁸¹ *Id.*

⁸² *Id.* at 4-5 n.16.

⁸³ *Id.*

⁸⁴ See *id.* at 4.

25. *Filing Reports.* The 2005 *Speed of Answer PN* also sought comment on whether the Commission should require providers to submit reports detailing call data reflecting their compliance with the speed of answer rule.⁸⁵ We decline to impose such a mandatory requirement at this time. We note, however, that NECA, in connection with its obligation to make payments from the Fund only “to eligible TRS providers operating pursuant to the mandatory minimum standards,” and therefore to verify payment claims, may seek access to this data.⁸⁶

B. Providing Service 24/7

26. Title IV of the ADA directs the Commission to adopt regulations to implement TRS, including regulations that mandate that TRS services “operate every day for 24 hours per day.”⁸⁷ As a result, the Commission’s initial regulations similarly provided that TRS shall operate 24 hours per day, seven days per week (“24/7”).⁸⁸ When the Commission recognized VRS as a form of TRS, however, it stated that because it was not mandating the service it would not require providers to offer it 24/7.⁸⁹ Therefore, the Commission amended its rules to state that “[r]elay services that are not mandated by this Commission need not be provided every day, 24 hours a day.”⁹⁰

27. In the 2004 *TRS Report & Order*’s FNPRM, the Commission, noting the increasing popularity of VRS service, sought comment on whether VRS should be a mandatory service and whether it should be required to be offered 24/7, “either as a mandatory service or even if not made a mandatory service.”⁹¹ The Commission also sought comment on how the possible shortage of qualified interpreters might affect this issue.⁹²

28. Three VRS providers, one consumer organization, and eight individuals filed comments on this issue.⁹³ Hands On, Sprint, and NVRSC assert that VRS should be offered 24 hours a day and 7 days a week because the provision of VRS is sufficiently mature, its use is widespread, and there would be minimal costs associated with providing VRS on a 24/7 basis.⁹⁴ Hands On notes, for example, that according to its traffic usage data the usage rate for the first hour and the last hour of the service consists of only 3 percent of the total minute usage, which means that the provider would only need to staff three

⁸⁵ 2005 *Speed of Answer PN* at 3.

⁸⁶ See 47 C.F.R. § 64.604(c)(5)(iii)(E).

⁸⁷ 47 U.S.C. § 225(d)(1)(C).

⁸⁸ See *TRS I*, 6 FCC Rcd at 4669, Appendix B (adopting 47 C.F.R. § 64.604(b)(4)).

⁸⁹ See *Improved TRS Order*, 15 FCC Rcd at 5159-5160, para. 42.

⁹⁰ 47 C.F.R. § 64.604(b)(4)(i).

⁹¹ 2004 *TRS Report & Order*, 19 FCC Rcd at 12568, para. 245. The Commission raised this same issue with respect to IP Relay, which we will address in a separate order. *Id.*, 19 FCC Rcd at 12564, para. 232.

⁹² *Id.*, 19 FCC Rcd at 12568, para. 245.

⁹³ Comments were filed by Hands On (Oct. 15, 2004); Sprint (Oct. 18, 2004); Sorenson (Oct. 18, 2004), and NVRSC (Oct. 18, 2004); Robin Mills; (Sept. 27, 2004); PJ Carberg (Sept. 15, 2004); Paula Warner (Sept. 16, 2004); Jan Humphrey (October 13, 2004); Karl Kosiorek (Oct. 5, 2004); Candita Lewis (Oct. 18, 2004); Jennifer Sweeney (Oct. 20, 2004); and Risa Gornie (Oct. 14, 2004). NVRSC also filed reply comments on this issue (Nov. 12, 2004).

⁹⁴ Hands On Comments at 21; NVRSC Comments at 12; Sprint Comments at 10.

to four additional interpreters during the midnight hours.⁹⁵ Sorenson, however, asserts that “there is a limited number of qualified individuals available to serve as interpreters for VRS and mandating that all providers staff [24/7] would put additional strains on this already limited pool[.]”⁹⁶

29. We conclude that VRS providers must offer service 24/7 to be eligible for compensation from the Interstate TRS Fund. The record reflects the rapid growth in the use of VRS since provision of this service began in 2002. Presently, there are approximately two million minutes of use of VRS each month. As consumers increasingly rely on VRS as their preferred means of using TRS to access the telephone system, it becomes imperative that consumers have access to this service 24/7. Indeed, Congress expressly recognized that having TRS available 24/7 is central to the notion of functional equivalency; it included that requirement in the statute. Finally, we recognize that the adoption of a speed of answer rule for VRS would be less meaningful if providers can choose when they will offer service.

30. For these reasons, we conclude that VRS providers must offer this service 24/7 to be eligible for compensation from the Interstate TRS Fund. Because the regulations provide that non-mandatory forms of TRS need not be offered 24/7,⁹⁷ we amend the rule so that it no longer applies to VRS.⁹⁸ The requirement that providers offer VRS 24/7 shall become effective on January 1, 2006, the same date that the VRS speed of answer rule adopted above is effective.

C. VRS Mail

1. The Petition for Declaratory Ruling

31. On March 31, 2004, Hands On filed a Petition for Declaratory Ruling requesting that the Commission declare that the provision of video VRS Mail to deaf and hard of hearing persons is eligible for compensation from the Interstate TRS Fund.⁹⁹ Video VRS Mail is used by a hearing person when she attempts to call a deaf or hard of hearing VRS user through a VRS CA, but the VRS user is not available to answer the call. In those circumstances, the hearing persons can have a VRS CA leave a message in video format ASL for the deaf or hard of hearing VRS user, so that the VRS user can retrieve the video message at a later time.

⁹⁵ Hands On Comments at 22.

⁹⁶ Sorenson Comments at 11-12. We note, however, that since the filing of its comments, Sorenson has begun offering VRS 24/7. See Sorenson Comments at 12; www.sorensonvrs.com. We also note that Hands On currently offers service 20 hours a day, 7 days a week, see www.hovrs.com, and the Communication Access Center for the Deaf and Hard of Hearing (CAC) currently offers service 21 hours a day Monday through Friday, and 18 hours a day Saturday and Sunday, see www.cacvrs.org. NVRSC asserts that the 24/7 requirement will create a market for VRS interpreters that will eliminate any shortages. NVRSC Reply Comments at 4. All but one of the individual commenters support adopting a 24/7 requirement for VRS to make the service more functionally equivalent to voice telephone service, although some of the commenters (including the individual commenter opposed to the adoption of the 24/7 rule) express concern about the availability of interpreters necessary to meet this requirement.

⁹⁷ See 47 C.F.R. § 64.604(b)(4)(i).

⁹⁸ We also note that the Commission raised the issue of whether VRS should be made a mandatory service at the same time it raised the issue of whether VRS should be required to be provided 24/7. We will address whether VRS should be a mandatory service in a separate order.

⁹⁹ *VRS Mail Petition* at 1.

32. As Hands On notes, although the majority of VRS calls are initiated by a deaf or hard of hearing person using a video link to a CA, a hearing person may also initiate a VRS call.¹⁰⁰ In the latter situation, the hearing person calls the VRS provider (usually via an 800 number) and gives either the IP address, or the name or proxy number (if the deaf or hard of hearing person is registered with the VRS service), of the deaf or hard of hearing person to be called.¹⁰¹ The VRS provider then attempts to place a VRS call to the deaf or hard of hearing person. If the deaf or hard of hearing person does not answer, VRS Mail gives the hearing calling party the option of leaving a VRS Video Mail message.¹⁰² If the calling party chooses to do so, the CA listens to the calling party's message and makes a video recording of the message in ASL. The CA then transmits (or otherwise makes available) the video message (the VRS Mail) to the deaf or hard of hearing person, who is able to retrieve the message on her video equipment at a later time.¹⁰³ Hands On asserts that, under the functional equivalency mandate, because a hearing person can receive a voice mail message from a CA who is relaying a VRS call initiated by a deaf or hard of hearing person, a deaf or hard of hearing person should also be able to receive a message from a hearing person who has initiated a VRS call.¹⁰⁴

33. On July 9, 2004, the Commission released a Public Notice requesting comment on Hands On's petition.¹⁰⁵ All commenters generally support Hands On's petition. Commenters generally agree

¹⁰⁰ *Id.* at 2.

¹⁰¹ *Id.* Some providers use a proxy or extension number to contact their VRS customers. *See, e.g.,* www.csdvrs.com (instructing hearing callers desiring to make a VRS call to call an 800 number and then provide either an IP address, a "CSDVRS Mail extension number," or an ISDN number); www.sorensonvrs.com/call/hearing.php (instructing hearing callers desiring to make a VRS call to call an 866 number and then provide the "contact information of the deaf or hard-of-hearing individual (i.e., name, videophone number or IP address)."

¹⁰² Because most videophone equipment currently does not have a built-in alert signaling feature, most deaf or hard of hearing VRS users do not have access to the equivalent of a ringing telephone to alert them that there is an incoming VRS call.

¹⁰³ *VRS Mail Petition* at 3. For example, the video message can be sent to the VRS user either via e-mail or, if the provider knows the IP address of the VRS user (e.g., through registration or some other arrangement with the particular provider), directly to the VRS user's hardware.

¹⁰⁴ *Id.* at 5. Hands On also notes that because a deaf or hard of hearing person can *leave* a voice message via VRS for a hearing person, a deaf or hard of hearing person should be able to *receive* a message in video from a hearing person. *Id.* at 3. Regardless of how characterized, the thrust of Hands On's argument is that VRS must provide symmetry between the parties to a call and their ability to leave or receive a message from the other party to the call. Hands On also asserts that regardless of how the transmission of Video Mail is technically accomplished, i.e., how it is stored and retrieved, the VRS call ends when the hearing person hangs up after leaving the message for the deaf or hard of hearing person. *Id.*

¹⁰⁵ *Petition for Declaratory Ruling Filed Regarding Provision of Video Relay Service (VRS) Video Mail*, CG Docket No. 03-123, Public Notice, DA 04-2062 (July 9, 2004). Five VRS providers, a state administrator, three consumer organizations, and ten individuals filed comments, and ten individuals filed reply comments. Comments were filed by CSD (August 11, 2004); Hands On (August 16, 2004); MCI (August 16, 2004); Sorenson (August 16, 2004); Sprint (August 16, 2004); Deaf Counseling, Advocacy and Referral Agency California Center for Law and the Deaf (DCARA) (August 12, 2004), NorCal Center on Deafness (NorCal) (August 13, 2004), Telecommunications for the Deaf, Inc. (TDI) (August 16, 2004); the Idaho Public Utilities Commission (Idaho PUC) (August 16, 2004). We note that the Consumer & Governmental Affairs Bureau sent nine Congressional letters in response to constituents' inquiries about VRS Mail.

that under the functional equivalency mandate both hearing persons (voice users) and persons who are deaf or hard of hearing (video users) should be able to leave messages with the other party to the VRS call through the CA.¹⁰⁶ They state that how the ASL message is stored by the CA and retrieved by the called party is irrelevant, so long as the VRS Mail service provides the functionality of leaving a message for the called party.¹⁰⁷ Commenters note that presently CAs leave voice mail messages from deaf and hard of hearing VRS users on the called party's answering machine or voice mail system, and that this is considered a reimbursable TRS call.¹⁰⁸ They assert that a deaf or hard of hearing VRS user should similarly be able to receive a message from the calling party, and that the VRS provider should be compensated for the conversation time in handling the call and creating the video message.¹⁰⁹

34. Sorenson also emphasizes that the ability to leave a voice mail message is common and vital for both business and personal communications, and therefore that it is essential that VRS users also have the ability to retrieve messages when they are unavailable to receive a call.¹¹⁰ CSD, noting that the Commission has an obligation "to ensure that regulations ... encourage ... the use of existing technology and do not discourage or impair the development of improved technology,"¹¹¹ contends that Congress intended to bring voice mail and other enhanced services under the wing of TRS as soon as these services became technologically possible.¹¹²

35. Commenters assert that providers should be compensated from the Interstate TRS Fund for the CA's conversational time with the calling party and recording the video message.¹¹³ CSD asserts, for example, that the Commission is simply being asked "to approve compensation for the *conversational*

¹⁰⁶ See, e.g., CSD Comments at 2; MCI Comments at 3; Hands On Comments at 7; Sorenson Comments at 3-4; NorCal Comments at 1; Sprint Comments at 2; DCARA Comments at 1; TDI Comments at 3-6.

¹⁰⁷ See, e.g., CSD Comments at 1-8; MCI Comments at 1-3; Sorenson Comments at 2; Sprint Comments 2.

¹⁰⁸ See, e.g., CSD Comments at 1; Sorenson Comments at 2-3; NorCal Comments at 1.

¹⁰⁹ See, e.g., CSD Comments at 3; Hands On Comments at 9; Sorenson Comments at 1-2. Sorenson asserts, for example, that "[w]hen a deaf or hard of hearing VRS user calls a hearing individual and the call is answered by an answering machine or is directed to voice mail, the TRS fund supports the portion of the call in which the [CA] leaves a voice message on behalf of the deaf user, translating the message from ASL into spoken language. The reverse scenario, in which the CA translates a hearing caller's spoken message into an ASL video message for a deaf user who has missed a call, is simply a variation of the one the Commission has already approved. There is no functional difference between a message being left in video format for a deaf user or in voice format for a hearing user; both allow the recipient of the message to retrieve the message in his or her native language (ASL or spoken English)." Sorenson Comments at 2.

¹¹⁰ Sorenson Comments at 3. Sorenson notes that it offers a service it calls "SignMail" that allows incoming video messages to be left for a VRS users when a hearing individual initiates a call and the VRS user is not available to answer the call. Sorenson asserts that "[t]his service has proved to be very popular with users," but that it has not been able to be compensated from the Interstate TRS Fund for the conversation minutes used to convert incoming voice messages into ASL video messages for VRS users. Sorenson Comments at 1.

¹¹¹ See 47 U.S.C. § 225(d)(2).

¹¹² CSD Comments at 5. Several commenters assert that video VRS mail service is no different from the TTY answering machine or voice mail features of traditional TRS. See, e.g., Idaho PUC Comments at 1-2; CSD Comments at 3-7.

¹¹³ See, e.g., CSD Comments at 3; Sorenson Comments at 2; Hands On Comments at 9; Sprint Comments at 2.

minutes needed to convert the message that the caller wishes to leave from voice to ASL.”¹¹⁴ Sorenson states that “[t]hose conversation minutes used by a CA to connect to the video screen, prompt the hearing caller to begin speaking his or her message and sign the message in ASL should be compensated, as these steps are functionally identical to those in the TRS/TTY context.”¹¹⁵

2. Compensation for VRS Mail from the Interstate TRS Fund

36. We conclude that VRS providers offering VRS Mail may be compensated from the Interstate TRS Fund for handling VRS calls that result in leaving a video message for the VRS user.¹¹⁶ As commenters note, a deaf or hard of hearing user who attempts to make a VRS call (or any kind of TRS call) to a hearing person, but reaches an answering machine or voice mail system, may have the CA leave a voice message for the called party, which is then reimbursable from the Fund. We also conclude that in the reverse scenario – when a hearing person attempts to call a VRS user who is not available – the CA should similarly be able to leave a reimbursable message with the called party. Whether viewed as affording VRS users the ability to *receive* messages from hearing persons, or as affording hearing persons the ability to *leave* a message with the VRS user, the implication is the same: regardless of which party to a VRS call initiates that call, each party should be able to leave messages with, and receive messages from, the other party.¹¹⁷

37. We also find that the fact that the CA, in creating a VRS Mail message, records in ASL what the calling party desires to say, and the VRS user retrieves the message as a video message (and not as a voice message), is of no consequence. As commenters have noted, the end result is that regardless of which party to the VRS call is leaving or receiving a message, each party is retrieving the message in his or her primary language. We believe that this fundamental service cannot be denied to VRS users simply because they receive the message as a video message.¹¹⁸ We also find that it is immaterial how the VRS provider stores the video message and how the VRS user retrieves the message. So long as the video message is created in real time – *i.e.*, the VRS CA records the video message at the same time that the

¹¹⁴ CSD Comments at 3 (emphasis in original).

¹¹⁵ Sorenson Comments at 2.

¹¹⁶ VRS Mail, by definition, is used when a hearing person attempts to make a call through a VRS provider to a person who is deaf or hard of hearing (sometimes called a “reverse” VRS call). We remind VRS providers that, to be eligible for compensation from the Interstate TRS Fund, they must provide access for hearing persons to call the VRS provider (generally via an 800 number) so the hearing person can request that the provider make an outbound call via video to a person who is a deaf or hard of hearing using VRS equipment. See 47 U.S.C. § 225(a)(3) (defining TRS as providing persons with hearing and speech disabilities the ability to engage in communication with persons without such disabilities, and not limiting it to calls initiated by the person with a hearing or speech disability).

¹¹⁷ Hands On and commenters make various arguments in support of the petition by analogizing to other services the TRS regulations require, including answering machine and voice mail retrieval, and the rules on calls placed through TRS that reach voice mail or interactive menus. See, e.g., Hands On Comments at 4-6; MCI Comments at 2-3; Sorenson Comments at 3-4; Sprint Comments at 2; TDI Comments at 5; see generally 47 C.F.R. § 64.604(a)(3)(vii) & (viii). Although we do not necessarily agree that these requirements address situations directly analogous to VRS Mail, they do support our conclusion here by indicating that the use of, and access to, messages that are left by calling parties when the called party is not available is fundamental to the meaningful use of the telephone system.

¹¹⁸ We agree with commenters that the ability to leave and receive messages is vital in both business and personal communications, and therefore VRS Mail service should be reimbursable. See, e.g., Sorenson Comments at 3.

hearing person is speaking the message during the VRS call, and not at some later time after the calling party has disconnected – the call is a VRS call that is compensable from the Interstate TRS Fund. In other words, the VRS provider may be compensated for the call from the beginning of the conversation time until the CA is done signing the message voiced by the calling party.¹¹⁹

D. Other Issues: Terminating CC Docket No. 98-67

38. In this *Order* we close the TRS docket – CC Docket No. 98-67 – that the Commission opened in 1998 when it released the 1998 TRS NPRM addressing improved TRS services, and incorporate its materials in the current docket, CG Docket No. 03-123 (materials submitted in CC Docket No. 98-67 need not be resubmitted). All filings addressing TRS matters should be filed in CG Docket No. 03-123.¹²⁰

IV. PROCEDURAL MATTERS

A. Final Regulatory Flexibility Certification

39. The Regulatory Flexibility Act of 1980, as amended (RFA),¹²¹ requires that an initial regulatory flexibility analysis be prepared for notice-and-comment rule making proceedings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.”¹²² The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”¹²³ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.¹²⁴ A “small business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria

¹¹⁹ The Interstate TRS Fund compensates for conversation minutes, which begin when someone (usually the called party) answers the outbound telephone call from the CA, and ends when either party to the call hangs up. *See generally* 47 C.F.R. § 64.604(c)(5)(iii)(E). Conversation minutes therefore do not include time for call set-up, ringing, waiting for an answer, and wrap-up, or calls that reach a busy signal or no answer. Therefore, for calls that result in VRS Mail, the VRS provider may be compensated for the time beginning when the hearing party begins to voice his or her message, and ending when the CA completes signing the message voiced from the calling party or the calling party hangs up, whichever is earlier. Because the conversation time for such calls will generally be short, and there are presently relatively few inbound VRS calls, we do not believe compensating this service will have a significant impact on the Interstate TRS Fund. Further, nothing in the record suggests the contrary.

¹²⁰ *See Second Improved TRS Report & Order*, 18 FCC Rcd at 12383 n.8 (opening CG Docket No. 03-123 to further administrative efficiency and to reflect the new organizational structure of the Commission).

¹²¹ *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. §§ 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

¹²² 5 U.S.C. § 605(b).

¹²³ 5 U.S.C. § 601(6).

¹²⁴ 5 U.S.C. § 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

established by the Small Business Administration (SBA).¹²⁵ Nationwide, there are approximately 1.6 million small organizations.¹²⁶

40. This *Order* addresses three issues related to the provision of Video Relay Service (VRS): (1) the adoption of a speed of answer rule for VRS; (2) whether VRS should be required to be offered 24 hours a day, 7 days a week (24/7); and (3) whether VRS providers may be compensated for providing VRS Mail. The Commission concludes that the public interest is best served by requiring providers of VRS to comply with a speed of answer rule in order to be compensated for such services. However, we do not require VRS providers to meet the new speed of answer rule in order to be compensated from the TRS Fund at this time. Instead, by January 1, 2006, VRS providers must answer 80 percent of all VRS calls within 180 seconds, measured on a monthly basis; by July 1, 2006, VRS providers must answer 80 percent of all VRS calls within 150 seconds, measured on a monthly basis; and by January 1, 2007, VRS providers must answer 80 percent of all VRS calls within 120 seconds, measured on a monthly basis. As noted in paragraph 25 of this *Order*, although the Commission sought comment on whether to require providers to submit reports detailing call data reflecting their compliance with the speed of answer rules, we declined to impose such a requirement at this time.

41. The Commission further concludes that it is in the public interest that VRS providers seeking compensation from the Interstate TRS Fund must provide VRS 24 hours a day, 7 days a week. As consumers increasingly rely on VRS as their preferred means of using TRS to access the telephone system, it becomes imperative that consumers have access to their service 24/7.

42. Finally, the Commission concludes that VRS providers may be compensated from the Interstate TRS Fund for the conversation minutes devoted to creating VRS Mail, *i.e.*, for recording a video message in American Sign Language (ASL) that is sent to a deaf or hard of hearing person's VRS equipment, or is otherwise retrievable by such person, so that a hearing person attempting to call a VRS user can leave a message when the VRS user is not available to answer the call. As explained in paragraph 37 of this *Order*, the Commission believes that this fundamental service cannot be denied to VRS users simply because they receive the message as a video message.

43. We do not believe that these actions will have a significant economic impact; however, in the event that they do, we also note that there are not a substantial number of small entities that will be affected by our actions. The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such firms having 1,500 or fewer employees.¹²⁷ Currently, only eight providers are providing VRS and are being compensated from the Interstate TRS Fund: AT&T, Communication Access Center for the Deaf and Hard of Hearing, Hamilton, Hands On, MCI, Nordia, Sorenson and Sprint. We expect that only one of the providers noted above is a small

¹²⁵ 15 U.S.C. § 632.

¹²⁶ Independent Sector, *The New Nonprofit Almanac & Desk Reference* (2002).

¹²⁷ 13 C.F.R. § 121.201, NAICS code 517110 (changed from 513310 in October 2002). According to Census Bureau data for 1997, there were 2,225 firms in this category which operated for the entire year. U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 5, NAICS code 513310 (issued Oct. 2000). Of this total, 2,201 firms had employment of 999 or fewer employees, and an additional 24 firms had employment of 1,000 employees or more. Thus, under this size standard, the majority of firms can be considered small. (The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1,000 employees or more.")

entity under the SBA's small business size standard. In addition, the Interstate Fund Administrator is the only entity that will be required to pay to eligible providers of VRS the costs of providing interstate service. The Commission will send a copy of this *Order*, including a copy of this Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the SBA.¹²⁸ This certification will also be published in the Federal Register.¹²⁹

B. Paperwork Reduction Act

44. This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. § 3506(c)(4).

C. Congressional Review Act

45. The Commission will send a copy of this *Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

D. Materials in Accessible Formats

46. To request materials in accessible formats (such as braille, large print, electronic files, or audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice) or (202) 418-0432 (TTY). This *Order* can also be downloaded in Word and Portable Document Formats (PDF) at <http://www.fcc.gov/cgb.dro>.

V. ORDERING CLAUSES

47. Accordingly, IT IS ORDERED, pursuant to the authority contained in Sections 1, 2, and 225 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, and 225, that this *Report and Order* IS hereby ADOPTED and Part 64 of the Commission's rules, 47 C.F.R. § 64.604 IS AMENDED as set forth in the attached Appendix.

48. IT IS FURTHER ORDERED that Hands On's Petition for Declaratory Ruling on VRS Mail IS GRANTED to the extent indicated herein.

49. IT IS FURTHER ORDERED that CC Docket No. 98-67 IS TERMINATED.

50. IT IS FURTHER ORDERED that this *Report and Order* SHALL BE effective 30 days after publication in the Federal Register.

¹²⁸ 5 U.S.C. § 605(b).

¹²⁹ *Id.*

51. IT IS FURTHER ORDERED that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center SHALL SEND a copy of this *Report and Order*, including the Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the U.S. Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

Appendix

Rule Changes

Part 64 of the Code of Federal Regulations is amended as follows:

PART 64 – MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 154, 254 (k); secs. 403 (b)(2) (B), (C), Public Law 104-104, 110 Stat.

56. Interpret or apply 47 U.S.C. 201, 218, 225, 226, 228, and 254 (k) unless otherwise noted.

* * * * *

2. Section 64.604 is amended by deleting the second sentence in paragraph (b)(4)(i) and inserting in its place the following:

§ 64.604 Mandatory minimum standards.

(a) * * *

(b) * * *

(4) * * *

(i) Relay services that are not mandated by this Commission need not be provided every day, 24 hours a day, except VRS.

3. Section 64.604 is amended by adding the following Note to the end of the section:

Note: VRS providers shall meet the following speed of answer requirements: (1) by January 1, 2006, VRS providers must answer 80% of all calls within 180 seconds, measured on a monthly basis; (2) by July 1, 2006, VRS providers must answer 80% of all calls within 150 seconds, measured on a monthly basis; and (3) by January 1, 2007, VRS providers must answer 80% of all calls within 120 seconds, measured on a monthly basis. Abandoned calls shall be included in the VRS speed of answer calculation. *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order, CG Docket No. 03-123, CC Docket No. 98-67, FCC 05-140 (2005).

**STATEMENT OF
CHAIRMAN KEVIN J. MARTIN**

Re: *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order (CC Docket No. 98-67, CG Docket No. 03-123), FCC 05-141

Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Report and Order (CG Docket No. 03-123, CC Docket No. 98-67), FCC 05-140

Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Order on Reconsideration (CC Docket No. 98-67, CG Docket No. 03-123), FCC 05-139

Closed Captioning of Video Programming Telecommunications for the Deaf, Inc. Petition for Rulemaking, Notice of Proposed Rulemaking (CG Docket No. 05-231), FCC 05-142

The items that we adopt today should improve the quality of life for individuals with hearing or speech disabilities. One of the critical functions of the Commission is to ensure that these individuals have access to communications technologies in the same manner as people without hearing or speech disabilities. Those consumers that rely on Telecommunications Relay Services and Closed Captioning Services must not be left out of the telecommunications revolution. In each of the orders adopted today, we take measures to fulfill our statutory goal of ensuring that every person has equal access to this nation's communications services.

The four items adopted today coincide with the upcoming 15th anniversary of President George H. W. Bush's signing of the Americans with Disabilities Act (ADA) on July 26th and the recent 25th anniversary of closed captioning which occurred last March. With the passage of the ADA in 1990, the Commission was directed to ensure that hearing or speech disabilities not pose an impediment to communication. I take this charge very seriously. Accessing communication services is vital to the ability of the individuals with disabilities to participate fully in society. The ADA specifically requires the Commission to ensure that Telecommunications Relay Services (TRS) "are available, to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States." In honor of the 15th anniversary of this very important statute, we adopt several items that make TRS more accessible to this community.

During the past 15 years, we have seen the evolution of TRS. Traditional TTY service over regular phone lines has evolved into IP Relay and Video Relay Services (VRS) used over Internet connections. VRS permits users to participate in near real-time conversations in the users' primary language, American Sign Language (ASL). Because of these features, its popularity in the deaf and hard of hearing community has soared. For example, the minutes of use of VRS have increased ten-fold in the past two years and are continuing to grow at a phenomenal rate.

With the steps we take today, we expand the reach of the TRS fund to compensate VRS translations between spoken Spanish and ASL as well as two-line captioned phone service. In addition,

we take an important step to achieving adequate service quality of VRS by, for the first time, imposing speed of answer and hours of service requirements. Just as a hearing person can pick up the phone and immediately place a call, a person with a disability should be able to reach his or her VRS provider to place a call without experiencing unreasonable delays. We also begin a rulemaking on whether our closed captioning rules are achieving our goal of making video programming accessible to the millions of deaf and hard of hearing Americans, and we ask whether any revisions should be made to make these rules more effective.

The Commission is more committed than ever to ensuring that the goals of the ADA are achieved. The actions we take today join the many others that the Commission has taken over the years to eradicate the barriers that stand in the way of functional equivalency. Functional equivalency means individuals with disabilities having access to the same services as everyone else. This equal access is vital to accessing jobs, education, public safety, and simple communications with family, friends, and neighbors.

Although there is still more to do in order to achieve functional equivalence, I am proud of the items adopted today. I want to assure those of you with hearing or speech disabilities that we will not stop actively working to fulfill your need for functional equivalence. We could not have taken today's actions without your valuable input. We thank you for your participation in our proceedings and look forward to working with you and the service providers to come up with solutions to the next set of challenges that we intend to tackle. It is by working together that we can best ensure that the tremendous advances in communications are enjoyed by *all* Americans.

**STATEMENT OF
COMMISSIONER KATHLEEN Q. ABERNATHY**

*Re: Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities (CC Docket No. 98-67 and CG Docket No. 03-123),
FCC 05-141*

*Re: Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities (CG Docket No. 03-123 and CC Docket No. 98-67),
FCC 05-140*

*Re: Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities (CC Docket No. 98-67 and CG Docket No. 03-123),
FCC 05-139*

Re: Closed Captioning of Video Programming and Telecommunications for the Deaf, Inc. Petition for Rulemaking (CG Docket No. 05-231), FCC 05-142

Lou Ann Walker, a noted advocate for the hearing-impaired, once said that the inability to *hear* is a nuisance, but the inability to *communicate* is a tragedy. These four items will allow consumers with hearing or speech impediments to communicate better by enabling them to receive improved service from their telephones and televisions.

Many of the decisions this Commission is called upon to make involve arcane matters with sometimes ambiguous results. That is not the case here. The issues in these items could not be clearer, and the effects of our rulings could not be more concrete. Today's decisions promise to have a profound and positive impact on the lives of millions of Americans living with hearing and speech disabilities. In short, I am hopeful that by expanding access to TRS and VRS offerings, and by opening a new proceeding to consider our closed captioning rules for video programming, we are helping to turn tragedies into nuisances.

Of course, whenever we enhance offerings such as TRS, VRS, and closed captioning, we must bear in mind the costs imposed by those offerings, which are borne by all consumers. I am pleased that the TRS and VRS items will dramatically expand access to these services *without* significantly increasing the costs involved. I am also satisfied that the *Notice of Proposed Rulemaking* on closed captioning seeks comment on issues relating to cost and practicality, and will produce a full record on those matters for the Commission's consideration.

Finally, I am particularly pleased that we have been able to resolve the cost-containment questions raised by compensating Spanish-language VRS from the Interstate TRS Fund. The record shows that Spanish is, by far, the most widely used non-English language spoken in the United States. It also demonstrates that the costs of providing ASL-to-Spanish VRS service are not significantly greater than the costs associated with ASL-to-English VRS service, a factor that was not clearly evident from the prior record. In my judgment these factors warranted reevaluation, and ultimately reversal, of our earlier decision denying compensation for such services.

One of our most important responsibilities is to make sure that there are no telecom "have-nots," and that the wealth of services provided by today's new technologies are available to *all* consumers. These four items, taken together, help to do just that.

**STATEMENT OF
COMMISSIONER MICHAEL J. COPPS**

Re: *Telecommunications Relay Services and Speech-to-Speech Services for
Individuals with Hearing and Speech Disabilities*, Order (CC Docket No. 98-67,
CG Docket No. 03-123), FCC 05-141

*Telecommunications Relay Services and Speech-to-Speech Services for
Individuals with Hearing and Speech Disabilities*, Report and Order (CG Docket
No. 03-123, CC Docket No. 98-67), FCC 05-140

*Telecommunications Relay Services and Speech-to-Speech Services for
Individuals with Hearing and Speech Disabilities*, Order on Reconsideration
(CC Docket No. 98-67, CG Docket No. 03-123), FCC 05-139

*Closed Captioning of Video Programming Telecommunications for the Deaf, Inc.
Petition for Rulemaking*, Notice of Proposed Rulemaking (CG Docket No. 05-
231), FCC 05-142

We all join in celebrating the fifteenth anniversary of the Americans with Disabilities Act. It's hard to believe it's already been fifteen years since Congress directed the Commission to ensure that people with disabilities have access to functionally equivalent communications services. "Functional equivalency" may sound like Washington jargon, but for 54 million Americans it translates into equal opportunity, equal rights and fuller participation in society.

We have come a long way in these fifteen years. And I am pleased that the Commission has been a part of some of that progress—expanding TRS, bringing new services like IP relay and VRS into the TRS fold, ensuring hearing aid compatibility with wireless phones. But this would be a hollow celebration if we did not also use this anniversary as a time of rededication, a time of commitment to new goals and new challenges. Because while the old obstacles of access and education and outreach have not been resolved completely, new challenges, born of technology and economic change, rise up to confront us.

The Commission takes on some of these challenges today. By finding that two-line captioned telephone service is eligible for support from the TRS fund, we expand functional equivalency for millions of Americans who are hard of hearing. By developing speed of answer requirements for VRS, we recognize that the ability to make a telephone call without delay is fundamental to our concept of a "rapid, efficient, Nation-wide" communications system. To date, VRS customers have endured unacceptably long waiting times—sometimes, I am told, up to 30 minutes—before being able to place a call. This kind of delay undermines functional equivalency. So I am pleased that today we introduce speed of answer standards that will pare down waiting time, without sacrificing the quality of the interpreting service.

We also reverse last year's misguided decision to exclude some forms of non-shared language TRS from reimbursement. As I pointed out at the time, Spanish speakers are the fastest growing minority group in the deaf school age population in the United States. For this population to communicate in a functionally equivalent manner with their Spanish-speaking parents, American Sign Language-Spanish VRS should be eligible for compensation from the TRS fund. I am pleased that we finally reach this conclusion here.

In addition to these actions on the TRS front, the Commission initiates a Notice of Proposed Rulemaking to update our closed captioning policies. For individuals who are deaf and hard of hearing, closed captions provide a critical link to news, entertainment and emergency information. By granting the petition for rulemaking filed by Telecommunications for the Deaf, the National Association of the Deaf, Self Help for Hard of Hearing People, the Association for Late Deafened Adults and the Deaf and Hard of Hearing Consumer Advocacy Network, we make an effort to keep our rules current and ensure that video programming is accessible to everyone.

Though we make progress today, there are many issues that still need our attention. There are open questions about equipment interoperability and certification for national VRS providers. There is the need always for more outreach and education. And, on another front, the disability community is justly concerned about fallout from the U.S. Supreme Court decision in *Brand X*. They do not want to see semantic exercises in classification and reclassification deny them the victories they have already won and the opportunities that new technologies hold for the future.

So we have our work cut out for us. Even as we celebrate this fifteenth anniversary, there is still a long and winding road to travel—rules to be adopted, jobs to be secured, people to be appreciated for their talents and humanity, hearts and minds to be really won over. Our actions today represent some good strides down that road. I am pleased to support them in full.

Finally, a note of appreciation for the Consumer and Governmental Affairs Bureau. The Disability Rights Office is not the largest office in this agency. But millions of Americans with disabilities—and their friends, and their families, and their co-workers—are better off because of the work of this office. Their efforts keep us all better connected. Thank you.

**STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN**

Re: In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CG Docket No. 03-123 and CC Docket No. 98-67; FCC 05-139, FCC 05-140, FCC 05-141 (July 14, 2005).

In keeping with the fifteenth anniversary of the Americans with Disabilities Act, which we celebrate this summer, we adopt today three items that will improve the quality of and access to important communications services for the deaf and hard of hearing community. These individuals rely on telecommunications relay service (TRS) not only to communicate with friends and family, but also to run successful businesses, reach operators in the event of an emergency, and complete everyday tasks that many of us take for granted. Having been a staff member in the U.S. Senate when the ADA was enacted and having worked on its passage, I remain committed to the goals of the ADA and its requirement that telecommunications services for hearing and speech –disabled individuals be “functionally equivalent” to those services provided to hearing individuals. We must continue our efforts to ensure that these services are available and of high quality. With an understanding of how critical these services are, I approve these Orders, each of which brings us closer to ensuring functionally equivalent services for millions of hearing-impaired and speech-impaired Americans.

I am particularly pleased that the Commission found non-shared language Spanish translation Video Relay Service (VRS) to be a form of TRS compensable from the Interstate TRS Fund. Non-shared language Spanish translation VRS allows a person signing in American Sign Language to communicate with a Spanish speaker through a communications assistant, who translates what is signed into spoken Spanish. When we addressed this same issue in 2004, I emphasized how our country is growing increasingly multi-ethnic and multi-cultural and that I believe the FCC must be responsive to these communities. Today’s Order does just that. As a result of this measure, deaf individuals, particularly children who are raised in Spanish-speaking homes but who are taught ASL in school as their primary language, will again be able to harness the power of VRS to communicate with their families and community members.

Today’s Order also adopts a speed of answer rule for VRS, requires that VRS be offered around the clock, and provides compensation for VRS Mail from the Interstate TRS Fund. Each of these measures ensures that VRS will remain a high quality service. While many hearing persons take it for granted that they will hear a dial tone when they pick up their telephone, this is not always the case for the millions of hearing-impaired or speech-impaired Americans. We received comments indicating that some individuals have had to wait up to twenty minutes before reaching a communications assistant to begin taking information for their call. These delays are unacceptable, especially considering that the person waiting could be trying to call for an ambulance or to report a crime.

By adopting a phased-in approach for the speed of answer requirement, this Order also responds to concerns that there may not be enough interpreters today to meet our ultimate goals for speed of answer. I’m pleased that we state clearly our intent to re-examine the speed of answer rule in 2007 to determine whether to further tighten this rule, even as we afford VRS providers a reasonable time to reduce their speed of answer times. I appreciate how providers, community organizations, and state and local governments have worked together to support schools across the country in their efforts to recruit and train more qualified interpreters. I hope that this kind of cooperation will continue as more and more interpreters are needed to meet the growing demand for VRS.

Finally, we clarify that two-lined captioned telephone service is a type of TRS eligible for compensation from the Interstate TRS Fund and adopt a specific methodology for compensating such calls. Like one-line captioned telephone service, two-lined captioned telephone service allows the user, typically someone who has the ability to speak and some residual hearing, to both listen to what is said over the telephone and simultaneously read captions of what the other person is saying. Two-lined captioned telephone service also offers several additional benefits, like call waiting and call forwarding. More important, this service also allows users to directly access 911 emergency services. Today's action not only takes another step forward toward securing functional equivalency of TRS services, but it also ensures that this critical service will continue to be offered to the hard of hearing community.

I want to thank Chairman Martin and my colleagues for their commitment on these issues, particularly for their willingness to look again at the question of Spanish-language VRS, which was particularly important to me. I also want to thank Monica Desai and the staff of our Consumer and Governmental Affairs Bureau for their hard work and dedication on these items. I look forward to working with my colleagues and with the hearing and speech impaired communities as we continue to work towards the ADA's enduring standard of accessibility and functional equivalency for all Americans.